

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION

CIVIL NO. 2:05CV12  
(2:03CR17)

GARY ALLEN KIRKPATRICK, )  
 )  
 Petitioner, )  
 )  
 Vs. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )  
 )

ORDER OF DISMISSAL

**THIS MATTER** is before the Court on the Petitioner's motion to vacate, **THIS MATTER** is set aside, or correct sentence pursuant to 28 U.S.C. § 2255, filed January 24, 2005.

By Judgment filed October 21, 2005, the Fourth Circuit Court of Appeals granted the Government's motion to remand, vacated the Petitioner's sentence, and remanded the case to this Court for resentencing. The Court has scheduled the resentencing for January 5, 2006. Therefore, the Fourth Circuit's remand has rendered the Petitioner's § 2255 motion moot.

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**IT IS, THEREFORE, ORDERED** that the Petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is **DENIED** as moot, and this action is hereby **DISMISSED WITHOUT PREJUDICE**.

**Signed: November 18, 2005**

A handwritten signature in black ink, appearing to read 'LH Thornburg', written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

